CONSTITUTIONAL LAW — CONSTRUCTION, OPERATION, AND ENFORCEMENT OF CONSTITUTIONS — PORTO RICO AS TERRITORY. — The police commissioner of New York arrested a fugitive from Porto Rico, by proceedings under a statute which provided for the extradition of a fugitive from any state or territory. The prisoner sued out a writ of *habeas corpus*. *Held*, that Porto Rico is a territory of the United States, and therefore the prisoner is not entitled to release. *Kopel* v. *Bingham*, U. S. Sup. Ct., Jan. 4, 1909.

The word "territory," as used in the Constitution and laws of the United States, would seem to apply only to the possessions of the United States which have been given an organized form of government by acts of Congress. This view is supported by the decision that Oklahoma, before its organization, was not a territory. *In re Lane*, 135 U. S. 443. As opposed to other organized possessions, the insular possessions are not part of the United States, so far as the applicability of the Constitution is concerned. *Hawaii* v. *Mankichi*, 190 U. S. 197. See REV. STAT. U. S. 1878, § 1891. But Porto Rico is not a foreign country within the meaning of the tariff laws. *De Lima* v. *Bidwell*, 182 U. S. 1. Such a possession is properly termed a dependency, and it would seem that the Supreme Court has adopted this distinction. See *Rassmussen* v. *United States*, 197 U. S. 516, 521. However, although the term "territory" has usually been applied only to organized territories within the United States, the court reaches a very necessary and not illogical result in declaring an organized dependency to be a "territory" within the extradition statute.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — REQUIRING CARRIER TO DELIVER CARS TO CONNECTING CARRIER. — The defendant railroad connected near its terminus with the Southern Railway, each having neighboring stockyards for the unloading of livestock. The stockyard of the Southern Railway sought to compel the defendant to receive cars of livestock at the place of connection and carry them to points of delivery on its line; and to deliver to the Southern Railway without transshipment cars sent from points on the defendant's line containing livestock consigned to the plaintiff. *Held*, that the state constitution, so far as it requires the defendant to do this, is invalid under the Fourteenth Amendment. *L. & N. R. R. Co.* v. *Central Stock Yards Co.*, U. S. Sup. Ct., Jan. 25, 1909.

In its public duties a railroad is subject to governmental regulation and may be compelled to provide reasonable facilities for the interchange of freight and allow connections with the tracks of another carrier. *Fitchburg R. R. Co.* v. *Grand, etc., R. R. Co.*, 4 Allen (Mass.) 198. Its rights are taken subject to the police power, but there must be a valid exercise of the power, and the question of the reasonable necessity of regulation is judicial. *Toledo, etc., Ry. Co.* v. *Jacksonville*, 67 Ill. 37. If it is arbitrary and unreasonable and infringes property rights, it is repugnant to the due process and equal protection clauses of the Fourteenth Amendment. *Stone* v. *Farmers, etc., Co.*, 116 U. S. 307, 331. Hence a railroad cannot be compelled to furnish transportation of livestock without compensation therefor. *R. R. Co.* v. *Campbell*, 61 Kan. 439. Although it is obliged at common law to receive freight tendered for carriage by connecting carriers, it is under no duty either to receive and use the other carrier's cars or to allow its own cars to be used by other carriers. *Oregon Short Line, etc., Co.* v. *No. Pac. R. R. Co.*, 61 Fed. 158; *Central Stock Yards Co.* v. *L. & N. Rd. Co.*, 192 U. S. 568, 570–571. To compel it to do either seems invalid if, as here, no provision is made to protect it from the loss or detention of its own cars, and a sharing of its terminal facilities with the cars of others. Cf. *Mays* v. *Seaboard Air Line Ry.*, 75 S. C. 455; 20 HARV. L. REV. 494.

CONSTRUCTIVE TRUSTS — NATURE AND LIMITATIONS OF DOCTRINE — CONVEYANCE BY MISTAKE. — An owner of land executed a deed to the defendant which by mutual mistake included certain lots not intended to be passed. Three days later the same grantor executed a deed to the plaintiff

covering the property by mistake granted to the defendant. *Held*, that the defendant holds the land in trust for the plaintiff and must convey to him. *Lamb* v. *Schiefner*, 40 N. Y. L. J. 1495 (N. Y., App. Div., Jan. 8, 1909).

It is obviously inequitable that a grantee retain property not intended to be conveyed to him. As between the original parties equity will in such case either allow complete mutual restitution or convert the grantee into a constructive trustee of the property inadvertently passed, and order a reconveyance. *Brown* v. *Lamphear*, 35 Vt. 252. It has been declared in general terms that redress will also be given as between those claiming under the original parties in privity. 1 STORY, EQ. JUR., 13 ed., § 165. Privity in this connection has been variously interpreted. See *White* v. *Kingsbury*, 77 Tex. 610; *Farley* v. *Bryant*, 32 Me. 474. It is submitted that on principle and authority no narrower rule should govern than that applicable to the running of equities generally. *May* v. *Adams*, 58 Vt. 74. Thus conceived, privity may be based either upon assignment of the contract or upon succession to the property. By construing the common grantor's deed to the plaintiff as a transference of his beneficial interest, the court readily finds privity of estate. A desirable result is accordingly achieved by correct technical processes. See *Widdicombe* v. *Childers*, 124 U. S. 400.

CORPORATIONS — FEDERAL JURISDICTION — FORMATION OF NEW CORPORATION TO EFFECT DIVERSITY OF CITIZENSHIP. — A South Dakota corporation brought ejectment against a citizen of Georgia in the United States Circuit Court, claiming jurisdiction by diversity of citizenship. The plea showed that the plaintiff was not the real party in interest, but had been organized and was doing business that citizens of Georgia might use its corporate name in order to create an apparent diversity of citizenship, and so get into the federal courts. *Held*, that the action be dismissed, as an attempted fraud on the court's jurisdiction. *Southern Realty Investment Co.* v. *Walker*, U. S. Sup. Ct., Jan. 4, 1909.

This decision is the logical outcome of a number of similar cases, where the property in controversy was conveyed to a new corporation organized for the purpose of acquiring federal jurisdiction. The Supreme Court has uniformly dismissed these suits. *Lehigh Mining & Mfg. Co.* v. *Kelly*, 160 U. S. 327; *Miller & Lux* v. *East Side Canal, etc., Co.*, 211 U. S. 293. The fraud is still more palpable where the cause of action is assigned, or where the name of the corporation organized for the fraudulent purpose is "borrowed." An assignment to an existing foreign corporation doing a legitimate business would probably be treated in the same way, since the transaction would be as much for the sole benefit of the real owner as in the case of a transfer of the property. However, a *bona fide* purchaser of the claim, or of the property, should, of course, be allowed to sue. For a discussion of the principles involved, and a consideration of the *Miller & Lux* case, see 22 HARV. L. REV. 290.

EQUITABLE CONVERSION — DEVOLUTION AFTER TOTAL FAILURE OF PURPOSES OF CONVERSION. — By a marriage settlement, real estate was conveyed by the settlor to trustees to the use of the settlor for life, and then to the use of trustees upon trust to sell for certain specified purposes. Afterwards, by his will, the settlor devised all his interest in these estates to his successor in fee. At the time of the settlor's death all the purposes for which conversion had been directed had failed. *Held*, that these estates devolve as realty under the testator's will. *In re Lord Grimthorpe*, [1908] 2 Ch. 675.

When real estate is settled upon trust to sell for certain purposes, the general rule is that the conversion takes effect as soon as the deed is executed. *Griffith* v. *Ricketts*, 7 Hare 299. Under this rule, the estates would be treated as personalty from the time of the marriage settlement. Nevertheless, since the settlor possessed the entire beneficial interest at the time of his death, he was entitled to elect, as he did by his will, that the property should remain in the form of realty. See *Harcourt* v. *Seymour*, 2 Sim. N. S. 12; *Stead* v. *Newdigate*, 2 Meriv. 521. The court, however, obtained the same result by the less artificial